UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/SR.28
28 August 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 26 August 1991, at 10 a.m.

Chairman: Mr. JOINET

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GE.91-13192/3608B

The meeting was called to order at 10.55 a.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS OF THE SUB-COMMISSION

Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission established under Commission on Human Rights resolution 8 (XXIII) (agenda item 6) (continued)
(E/CN.4/Sub.2/1991/L.15, L.20 and L.22)

Draft resolution E/CN.4/Sub.2/1991/L.20

1. Following a procedural discussion in which Mrs. PALLEY, Mrs. WARZAZI, Mrs. DAES, Mrs. ATTAH, Mr. ALFONSO MARTINEZ and Mr. RIVAS POSADA took part, the CHAIRMAN asked the Secretary to read out the amendments which had been incorporated in the draft resolution as revised.

2. Mr. CISSE (Secretary of the Sub-Commission) said that in the second preambular paragraph the words "the consequences of which threatened international peace and security" should be inserted in the third line between "Iraq" and "and".

3. The text of the third preambular paragraph should be amended to read as follows: "Welcoming Security Council resolution 687 (1991) of 3 April 1991 which decided that the prohibitions of resolution 661 (1990) against sale and supply to Iraq of products other than medicine and health supplies would not apply to foodstuffs or essential civilian supplies and resolution 706 (1991) of 15 August 1991 which established a mechanism for the purchase of foodstuffs, medicine and materials for essential civilian needs in Iraq,".

4. In operative paragraph 5 the words "and other" should be added in the fourth line between "Kurdish" and "refugees".

5. Mr. TREAT expressed the view that the substantive provisions of the revised draft resolution were generally commendable. He had reservations on procedural grounds about operative paragraph 5 as he was always disturbed at the tendency of the Sub-Commission to upstream recommendations to the Commission on Human Rights. He questioned whether the Sub-Commission should be put in a position of diminishing or enlarging the duties of a special rapporteur. Even a recommendation might be interpreted as an attempt by the Sub-Commission to change the duties and responsibilities of a special rapporteur who had been appointed by the Commission and whose duties were defined by the Commission and not by the Sub-Commission. There seemed to be some procedural irregularity in such a situation.

6. Mr. GUISSE expressed concern regarding operative paragraphs 3, 4 and 5. The Sub-Commission seemed to be creating too much machinery and the draft resolution might not be applicable. Operative paragraph 3 spoke of international humanitarian organizations while paragraph 4 talked of a human rights monitoring operation within Iraq and operative paragraph 5 wanted the Special Rapporteur to include a wealth of general information on what he had seen.

7. In his view, operative paragraph 4 should be deleted in order to avoid useless overlap. If it was retained, its wording should not be imperative in tone.

8. Mrs. WARZAZI said that for many years past the Third Committee of the General Assembly had been discussing the issue of a possible United Nations High Commissioner for Human Rights but it had not been possible to reach any agreement on the issue. The Sub-Commission should not attempt to take a position on an issue on which there was no consensus in the General Assembly. Any United Nations monitoring operation on human rights should not in any case be confined to Iraq but should be extended to cover all countries of the world. She was not therefore in favour of operative paragraph 4.

9. She shared the concerns expressed by Mr. Treat on operative paragraph 5. The Commission on Human Rights might well tell the Sub-Commission to get on with its own business and that it would itself decide how to instruct its own Special Rapporteur. The paragraph was in any case somewhat naive in seeking for information regarding the living conditions of refugees. Everybody knew that the living conditions of refugees everywhere were terrible.

10. Mr. RIVAS POSADA, on behalf of the sponsors, proposed that in order to meet the concerns expressed by some members, the word "Recommends" in operative paragraph 5 should be replaced by "Expresses the hope".

11. In view of the misgivings voiced by some members, the sponsors would be prepared to withdraw operative paragraph 4.

12. Mr. SACHAR, supported by Mr. ILKAHANAF, urged the withdrawal of operative paragraph 5 on the grounds that the draft resolution dealt specifically with Iraq and it would not therefore be correct to include other countries without discussion.

13. Mr. MAXIM said the sponsors agreed that operative paragraph 5 should be deleted.

14. Mr. AL-KHASAWNEH, supported by Mr. ALFONSO MARTINEZ, asked what was the reason for the inclusion of the reference to Security Council resolution 687 (1991) in the third preambular paragraph of the revised draft resolution, which made the text extremely cumbersome.

15. Mrs. KSENTINI said that she would like to propose two amendments to the draft resolution, the first recalling the provisions of the Geneva Convention of 12 August 1949 concerning the protection of civilians in time of war, particularly article 23 of that Convention, and the second encouraging the Secretary-General of the United Nations to take all humanitarian measures necessary to satisfy the urgent needs of the Iraqi civilian population.

16. After a discussion in which Mr. RIVAS POSADA, Mr. ALFONSO MARTINEZ, Mrs. ATTAH, Mr. TREAT, Mrs. WARZAZI and the CHAIRMAN took part, Mrs. KSENTINI indicated that, in the light of the considerations raised, she would withdraw her amendments.

17. Mr. AL-KHASAWNEH expressed doubts about the third preambular paragraph, which began with the word "Welcoming". That word would be perfectly in order if members of the Sub-Commission were representatives of States welcoming a Security Council resolution; however, they were independent experts, and the resolution raised delicate questions about Security Council resolutions, humanitarian law applicable in armed conflicts and above all the use of food in armed conflicts. In order not to prejudice anyone's position he proposed that instead of using the word "Welcoming" the third preambular paragraph should begin "Taking note of".

18. Mr. RIVAS POSADA said that the co-sponsors had no objection to Mr. Al-Khasawneh's suggestion.

19. Mr. AL-DOURI (Observer for Iraq) recalled that the question of human rights in Iraq had become an important issue in the Sub-Commission's work during two ferocious wars, one with Iran and the other with the coalition forces, in so far as the two wars had had negative repercussions on all aspects of life in Iraq including the promotion of human rights. However, the repercussions of those two wars had not been taken fully into consideration by a number of members. The effects of the war launched by the Western allies included repercussions on the life and security of the whole Iraqi population, for example, after the cease-fire, in the north and in the south of the country. There had not been a wave of repression against Kurds and Shi'ites in Iraq in March 1991 but a state of confusion, which was the aftermath of the war, that had been exploited by neighbouring and other foreign forces. The Government of Iraq had acted to put a halt to the pillaging, killing and confusion occurring in those regions and which had driven many citizens to flee to Iran and Turkey.

20. There had been no persecution, contrary to what was stated in the fifth preambular paragraph of the draft resolution, but legitimate action by the Iraqi Government in order to establish stability and security. The same remark applied to operative paragraph 1 of the draft resolution. The Government of Iraq categorically rejected the commission of human rights violations against Kurdish and Shi'ite populations: if it was true that there was a Kurdish political problem in Iraq, there was no Shi'ite problem since Shi'ites were a Muslim Arab tribe that constituted the majority of the population. It was highly significant that British colonialism had tried in the past to raise that matter and today it was reappearing in the Sub-Commission. With regard to operative paragraph 3 of the draft resolution, he asked whether any reports or information indicated that the Iraqi Government had not cooperated with international organizations providing Iraq with assistance. He believed that Iraq had fully cooperated with all such organizations. Iraq had also given an assurance that it would cooperate with the Special Rapporteur when he began his work. He hoped the experts would take his comments into consideration.

21. Mr. ALFONSO MARTINEZ asked to know the outcome of the negotiations on the third preambular paragraph.

22. Mr. RIVAS POSADA said that the only change that had been accepted was the proposal by Mr. Al-Khasawneh to change "Welcoming" to "Taking note of".

23. The CHAIRMAN invited the Sub-Commission to vote on the draft resolution by secret ballot.

24. At the invitation of the Chairman, Mr. Chernichenko and Mr. Treat acted as tellers.

25. A vote was taken by secret ballot.

26. Draft resolution E/CN.4/Sub.2/1991/L.20, as amended, was adopted by 16 votes to 2 with 4 abstentions.

Draft resolution E/CN.4/Sub.2/1991/L.22

27. Mr. van BOVEN welcomed the fact that, as reflected in draft resolution E/CN.4/Sub.2/1991/L.22, the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional had concluded agreements on the verification of human rights obligations. He hoped that investigation by the United Nations observer mission augured well for the future.

28. However, there was concern that long-standing violations of human rights continued in El Salvador. In particular many murders and executions had not been investigated fully or even at all, and impunity prevailed.

29. One example was that of the murdered Jesuits, which despite a request by the Commission on Human Rights to the authorities of El Salvador, had not been clarified.

30. He therefore proposed the following two amendments. In the last preambular paragraph, the words "and that acts contrary to the undertakings given continued to occur" should be replaced by the words "and that there has not been substantial progress in the judicial inquiry and punishment of those guilty of murders on 16 November 1989 at the Central American University". In the operative part, a new paragraph 3 would be added, reading

> "3. Calls upon the competent authorities to take the necessary measures to ensure that substantial progress will be made in the judicial inquiry and the punishment of those guilty of murders on 16 November 1989 at the Central American University."

31. Mr. GUISSE asked whether it would be possible to replace the word "punishment" by the word "sanctions".

32. Mr. van BOVEN replied that the case in question was a criminal case, and therefore the word "punishment" was more precise.

33. Mr. HELLER said that the amendments were acceptable to the sponsors.

34. Mr. MENDOZA (Observer for El Salvador) said that the draft resolution sponsored by four Latin American members of the Sub-Commission was in harmony with events in his country, where the serious situation that had obtained in the 1980s had been improved by the process of democratization, dialogue and the adoption of the San José agreement, the implementation of which was

being verified by the United Nations observer mission. With regard to the amendments proposed by Mr. van Boven, he wished to point out that resolution 1991/75 of the Commission on Human Rights had led to a series of investigations. An important part of the forward-looking draft resolution before the Sub-Committee was the reference to the work of mediation being undertaken by the Secretary-General of the United Nations. El Salvador had suffered greatly in the previous decade and welcomed any assistance in achieving a solution to its problems.

35. The CHAIRMAN invited the Sub-Commission to vote on the draft resolution.

36. Mr. DESPOUY asked who had requested a vote; there might be a consensus on the draft resolution.

37. After a brief procedural discussion in which Mrs. ATTAH, the CHAIRMAN, Mr. SABOIA, Mrs. KSENTINI, Mr. EIDE, Mr. DESPOUY and Mr. AL-KHASAWNEH took part, the CHAIRMAN said that, since Mr. Alfonso Martínez had requested, at the previous meeting, that a vote be taken on all draft resolutions submitted at the current session in which reference was made to a particular State, a vote would be taken. He invited the Sub-Commission to vote on the draft resolution by secret ballot.

38. At the invitation of the Chairman, Mr. Chernichenko and Mr. Treat acted as tellers.

39. A vote was taken by secret ballot.

40. Draft resolution E/CN.4/Sub.2/1991/L.22, as amended, was adopted by 18 votes to 1, with 3 abstentions.

Draft resolution E/CN.4/Sub.2/1991/L.15 (continued)

41. Mr. van BOVEN recalled that at its previous meeting Mrs. Ksentini had proposed three amendments to the draft resolution. The sponsors had agreed to two of those amendments but some of them had considered that the amendment to operative paragraph 1 was too specific in the light of the general nature of the draft resolution. The sponsors, however, had agreed that the main substance of that amendment would be included, but without any reference to a specific territory or situation. He therefore requested Mrs. Ksentini to read out her amendment to operative paragraph 1, as agreed upon in principle, and hoped that the Sub-Commission would be able to adopt the draft resolution on that basis.

42. Mrs. KSENTINI, after thanking the sponsors for their open-mindedness, said that, since the draft resolution was of a general nature, she had agreed to delete from her amendment all references to specific situations. She therefore wished to reformulate her amendment to operative paragraph 1 (a) as follows:

> "(a) The illegal and null and void nature of the establishment of settlements in the occupied territories (les territoires occupés)".

43. Mrs. PALLEY asked whether Mrs. Ksentini meant "the occupied territories" or "any occupied territories". She herself would be very pleased to accept the formulation with the word "any".

44. Mrs. DAES said that it was her recollection that it had been agreed that the subparagraph in question concerned "any" occupied territories.

45. Mr. KHALIL said that the wording should be "occupied territories".

46. Mrs. KSENTINI explained that her proposed text was "les territoires occupés", which included all occupied territories.

47. Mr. SACHAR suggested that the wording should be "an occupied territory", since the words "the occupied territories" might be considered specific.

48. The CHAIRMAN suggested that, with that formulation, the draft resolution could be adopted.

49. Mr. YIMER said that in English the correct usage would be "in occupied territories", but the words "dans les territoires occupés" would be correct in French.

50. Mrs. KSENTINI agreed to that solution.

51. Draft resolution E/CN.4/Sub.2/1991/L.15, as amended, was adopted by consensus.

52. Mr. TURK observed that the Sub-Commission had gone through an interesting experience on agenda item 6 and had learned something about the discreet charm of consensus and the difficulties that arose if resolutions were adopted by votes instead of by consensus.

53. The CHAIRMAN said that the Sub-Commission had concluded its consideration of agenda item 6.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 10) (continued)

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

54. Mr. EIDE, having recalled that draft resolution E/CN.4/1991/L.21, entitled "Investigation of the situation in the Baltic States by Estonia, Latvia and Lithuania", had been withdrawn, said that he wished to record his satisfaction that the exercise of the right to internal self-determination had made it possible to solve the problems of several peoples. The recent attempted coup d'état in the Soviet Union had failed and the constitutional process had been restored. He commended those in the Soviet Union who had bravely resisted the attempt to reverse the efforts to introduce freedom of expression and other elements of a free society in the Soviet Union.

55. He recalled the statement by the Chairman of the Commission on Human Rights on 26 February 1991 had said that there were unresolved problems in the field of human rights in Lithuania and Latvia and had urged the

authorities concerned to ensure that human rights and fundamental freedoms were fully enjoyed there without discrimination. He welcomed the decision of the Government of the Soviet Union to conduct a thorough investigation into the tragic loss of life in the Baltic Republics and its expression of willingness to communicate the results of the investigation to the Chairman of the Commission on Human Rights.

56. Mr. MALGINOV (Observer for the Union of Soviet Socialist Republics) expressed his delegation's deep gratitude to those experts on the Sub-Commission who had spoken out in defence of constitutional and human rights in the Soviet Union. It was particularly grateful to Mr. Eide for having raised the question in so decisive and timely a manner in the previous week, and to Mr. Despouy, the Special Rapporteur, for his timely communication to the leadership of the Soviet Union.

57. The events in the Soviet Union had shown that an anti-constitutional coup and unlawful activities could threaten basic human rights. His delegation was happy that the firm position adopted by the Soviet people had made it possible to counter anti-constitutional activities and restore democracy and the rule of law. An important role had been played in that connection by international support.

58. With respect to Mr. Eide's statement, he confirmed that the competent Soviet authorities would complete their consideration of the events in Latvia and Lithuania, events which had been a rehearsal for those of the previous week and had led to a tragic loss of human life. The requisite information would be sent to the Chairman of the Commission on Human Rights.

59. Mr. TREAT welcomed the statements by Mr. Eide and the observer for the USSR concerning events in the Baltic States. Extensive negotiations had taken place the previous week on his proposed draft resolution, which some members of the Sub-Commission had considered premature. In the meantime events in the Soviet Union had accelerated the process of self-determination. He welcomed that development while deploring the concommitant loss of life. Events in the Soviet Union had shown that sometimes the people were ahead of the politicians.

60. Mr. TURK endorsed the statements made by Mr. Eide and Mr. Treat. The principle of self-determination was universally applicable although the ways in which it was applied varied with circumstances.

61. At that stage it was, however, very important for the concept and the importance of self-determination to be borne in mind, and Mr. Eide and Mr. Treat had appropriately emphasized that point.

62. Mrs. WARZAZI remarked that the members of the Sub-Commission should try to avoid politicizing the discussion.

63. Mr. CHERNICHENKO said that as a Soviet citizen he had been particularly concerned by the events of the previous week. He thanked the members of the Sub-Commission who had reacted so energetically to those events and had supported democratic forces and constitutional rights in his country.

The meeting rose at 1.10 p.m.